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IN THE

# Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 169

AMES NOWELL, *Petitioner,*

v.

MARGUERITE LOVELETT NOWELL

---

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

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FREDERICK BERNAYS WIENER,
1730 Pennsylvania Avenue, N.W.,
Washington, D. C. 20006,
*Counsel for the Petitioner.*

WILLIAM C. STRONG,
JOHN J. SULLIVAN,
Smith Building,
Greenwich, Conn. 06830,
*Of Counsel.*

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AMES NOWELL, your petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Connecticut, entered in the above-entitled case on January 28, 1969.

### OPINIONS BELOW

The opinion of the Supreme Court of Connecticut, as amended on March 5, 1969 (Appendix A, *infra,* pp. A1-A13), has not yet been reported.

Opinions in prior phases of this litigation, duly explained in the Statement, are reported at 408 S.W. 2d 550, certiorari denied, 389 U.S. 847 (Oct. T. 1967, No. 199), and at 155 Conn. 713, 229 A. 2d 701, certiorari denied, 389 U.S. 849 (Oct. T. 1967, No. 451).

## JURISDICTION

1. The judgment of the Supreme Court of Connecticut was entered on January 28, 1969 (Appendix B(1), *infra*, p. A14).

2. Motions by both sides to reargue were denied by the Supreme Court of Connecticut on March 5, 1969 (Appendix B(2), *infra*, p. A15).

3. The judgment of the Supreme Court of Connecticut was final, because following its entry only a ministerial act remained to be done (Appendix A, *infra*, pp. A12-A13). E.g., *Republic Gas Co.* v. *Oklahoma*, 334 U.S. 62, 68; cf. *Construction Laborers* v. *Curry*, 371 U.S. 542, 549-551.

4. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

## QUESTIONS PRESENTED

1. Whether a judgment entered in a State under whose law it is not *res judicata* pending appeal but on final affirmance becomes effective as if no appeal had been taken, is denied Full Faith and Credit by a sister State which, while acknowledging the validity of that judgment, nonetheless refuses to give it effect as of the date of its entry, and awards the losing party for the period of unsuccesful appeals therefrom until final affirmance relief that was denied such party by the rendering State.

2. Whether a judgment of absolute divorce obtained by the husband after the wife's appearance by counsel and in person, which settles property rights and awards the wife counsel fees but specifically denies her any and all other relief, and which by the law of the rendering State is not *res judicata* pending appeal but on affirmance becomes fully effective as if no appeal had been taken, is denied Full Faith and Credit by a sister State which, notwithstanding the divorce judgment, the validity of which it recognizes, awards the wife a separation and alimony up

to the date of the final affirmance of that judgment, on the basis of a subsisting marriage and on grounds directly opposite to those recited therein.

## CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The constitutional provision and statute involved are set forth in Appendix D, *infra*, p. A25.

## STATEMENT

The parties hereto, who will be designated throughout simply as husband and wife, were married in Maryland in 1957, and after 1960 lived in Connecticut. They separated in 1962, and in November of that year the husband left Connecticut and has never returned there to live. (R. 36; P.A. 44, 51.)[1]

On December 2, 1962, the wife commenced the present action with a complaint for divorce (R. 1-2), which on June 5, 1963, was amended so as to drop the claim for divorce and to plead instead a count for separation and a second count for equitable support (R. 13-17). Meanwhile, on February 26, 1963, the husband was directed to pay the wife alimony *pendente lite* in the sum of $1650.00 per month (R. 6). In due course, the issues in the case were referred to a referee (R. 36).

In February 1964, following the wife's amendment of her complaint to one seeking only separation and support, the husband established residence and domicile in Texas (P.A. 29-30), and on March 15, 1965, having resided in Texas for more than a year, filed in Domestic Relations Court No. Two of Dallas County an action for divorce, the summons in which was served on the wife in Connecticut in September of that year (R. 42; P.A. 21).

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[1] "R." refers to the printed record below; "P.A." to petitioner's appendix, viz., the items included in the appendix to petitioner's brief filed in the court below.

There followed an injunction from the Texas court restraining the wife from taking any action to interfere with the Texas proceeding (P.A. 21-22), and, a few hours after the wife received a copy thereof (P.A. 21-22), a similar injunction from the Connecticut court restraining the husband from proceeding with the pending Texas action and from instituting similar proceedings in any other state (R. 42-46; P.A. 22).

After the Connecticut referee had filed a report finding that the wife had failed to meet residence requirements for a legal separation and suggesting that she amend her complaint accordingly, and further finding that she was entitled to equitable support (R. 36-40), she amended as suggested (R. 41, 48-51), whereupon the referee on December 2, 1965, filed an amended report (R. 76-79). The referee then recommended that the wife be given a decree of legal separation; that the husband be ordered to pay her $1650.00 a month for support and $24,000.00 as counsel fees; and that she be given the proceeds of a half interest in the parties' Darien home, on which the husband should pay mortgage instalments and expenses of maintenance until the sale thereof (R. 79).

Shortly before the date of the foregoing report of the Connecticut referee, the wife appeared by counsel in the Texas divorce action and by suitable motions challenged the jurisdiction of the Texas court over the parties and the subject-matter; those motions were overruled (P.A. 22; Appendix C, *infra*, pp. A16-A17).[2]

Following the entry of the Connecticut referee's amended report (R. 76-79), the wife appeared generally in the Texas divorce action, and, in person and by counsel, actively contested all of the issues therein, in a trial taking

[2] For the convenience of the Court, we have set forth in full as Appendix C to this petition (*infra*, pp. A16-A24) the Texas judgment involved in the present litigation (P.A. 1-11).

place on December 15, 16, 17, and 18, 1965 (Appendix C, *infra*, pp. A16-A17; P.A. 19-20, 23).

Pursuant to the Texas practice, five issues were, at the wife's demand, submitted to the jury, which found special verdicts thereon as follows (Appendix C, *infra*, pp. A18-A19):

1. The husband was a bona fide inhabitant of Texas for twelve months immediately preceding December 6, 1965.

2. The wife was guilty of excesses, cruel treatment, or outrages.

3. These excesses, cruel treatment, or outrages were of such a nature as to render the further living together of husband and wife insupportable.

4. The husband did not commit excesses, cruel treatment or outrages of the same general kind and character toward the wife that provoked the acts found in the answer to special issue 2.

5. The wife abandoned the husband for a period of three years prior to December 6, 1965.

Accordingly the Texas court entered a judgment of absolute divorce which expressly dissolved the bonds of matrimony between the parties and restored them to the status of single persons (Appendix C, *infra*, p. A19). In its judgment the Texas court then adjudicated the property rights of the parties as follows:

1. The parties' antenuptial agreement was held valid (*infra*, pp. A19-A20).

2. The Darien house should be sold, and the proceeds after payment of the mortgage equally divided between the parties (*infra*, pp. A20, A22).

3. The husband is entitled to his mother's jewelry now in the wife's possession, which she must deliver to him (*infra*, A20, A21), likewise as to furniture, china, and the like (*infra*, pp. A20-A22).

4. The husband is entitled as his separate property to a Rambler automobile (*infra,* pp. A20, A22), and to a motor boat (*infra,* pp. A21, A22).

5. The wife is entitled as her separate property to a Thunderbird automobile (*infra,* pp. A20, A22); to furniture in the Darien house (*infra,* p. A21); to houses in Briarcliff Manor, N. Y., and Southport, Conn. (*infra,* pp. A21, A22); to securities in her name (*ibid.*); and to be free of any mortgage obligation in respect of the husband's motor boat (*ibid.*).

6. The parties are to be held harmless in respect of mortgage obligations on each other's separate real property divided as above (*infra,* p. A23), and are to be entitled as their separate property to all personal effects in their possession not otherwise adjudicated (*ibid.*).

7. The husband must pay the wife $6,000.00 for counsel fees (*infra,* pp. A23-A24).

8. "It is further ORDERED, ADJUDGED AND DECREED by the Court that any and all relief not expressly granted herein to either of the parties is expressly denied" (*infra,* p. A24).

The wife appealed from the foregoing decree to the Court of Civil Appeals for the Fifth Supreme Judicial District of Texas (P.A. 15-36), which on October 28, 1966, affirmed the judgment (*Nowell* v. *Nowell,* 408 S.W. 2d 550), and on November 18, 1966, denied a rehearing (P.A. 33). The Supreme Court of Texas refused a writ of error on February 1, 1967 (P.A. 37), and denied a rehearing on March 1, 1967 (P.A. 38). Thereafter the wife's petition for a writ of certiorari was denied by this Court on October 9, 1967. *Nowell* v. *Nowell,* 389 U.S. 847 (Oct. T. 1967, No. 199).

Following the entry of the Texas judgment granting a divorce and determining the parties' property rights, dated December 22, 1965 (Appendix C, *infra,* pp. A16-A24), the

husband, presenting that judgment to the Connecticut court, repeatedly but unsuccessfully urged the Texas judgment as a bar to further proceedings in Connecticut:

(a) In support of a motion to dismiss or for an injunction (R. 84-86, 90-91); denied (R. 94-95 [¶ 4]).

(b) In support of a motion to amend his answer to plead the Texas judgment as a defense (R. 90-92); denied (R. 92).

(c) As an objection to the referee's report (R. 92-93); overruled (R. 93).

(d) In support of numerous other motions and exceptions (R. 108-110); overruled (R. 94-95).

Thereupon, the Connecticut court on April 22, 1966, over the husband's opposition (R. 96-97), granted the wife's motion for a judgment of legal separation (R. 97-99), based upon a relationship of husband and wife and upon grounds directly contrary to the special verdicts of the Texas jury recited in the Texas judgment (R. 36, 48-51, 76-78; Appendix C, *infra*, pp. A18-A19).

The only articulated reason of record ever given for disregard of the Texas judgment was the statement that the husband had been enjoined from prosecuting the Texas action (R. 94-95 [¶ 4]).

In its April 22, 1966, judgment, the Connecticut court also directed that the husband pay permanent alimony of $1650.00 per month plus $24,000.00 in counsel fees, and decreed a division of the Darien house (R. 97-99). The husband appealed (R. 102), after which on June 22, 1966, the Connecticut court ordered him to pay his wife $6,000 as counsel fees to defend the appeal (R. 105), and to pay alimony pending the appeal (R. 105-106).

Subsequently, when the husband did not pay counsel fees on appeal as ordered, the Supreme Court of Connecticut

conditionally dismissed his appeal (155 Conn. 713, 229 A. 2d 701), and, on the husband's petition, this Court on October 9, 1967, denied certiorari. *Nowell* v. *Nowell,* 389 U.S. 849 (Oct. T. 1967, No. 451).

When the husband then paid the $6,000 counsel fees to the wife as earlier ordered (R. 105), his appeal proceeded, and was decided by the Supreme Court of Connecticut in a decision announced on February 11, 1969 (Appendix A, *infra,* pp. A1-A13).

That tribunal recognized the effectiveness of the Texas judgment of divorce (*infra,* pp. A5-A6), but held that, since in Texas a judgment is not final while an appeal therefrom is pending (*infra,* pp. A6-A7), that judgment was not entitled to Full Faith and Credit elsewhere until, after the denial of certiorari by this Court on October 9, 1967, it became final (*infra,* pp. A7-A8).

However, the Supreme Court of Connecticut refused to apply the further Texas rule that a judgment once affirmed stands as though never appealed, and, reasoning that since Texas awards temporary alimony pending appeal, held that the Connecticut support orders survived the Texas decree until that decree became final (*infra,* pp. A9-A10). But, it added (*infra,* p. A13), "In the event that the house in Darien has not yet been sold, we direct that its disposition should be governed by the terms of the Texas judgment."

The Supreme Court of Connecticut rejected all of the husband's other contentions, but further held that his violation of the injunction against his pursuing the Texas proceeding did not militate against the validity of the judgment of divorce entered therein (*infra,* pp. A5-A6, A10-A11).

Motions by both parties for reargument were denied on March 5, 1969 (Appendix B (2), *infra,* p. A15).

## HOW THE FEDERAL QUESTION WAS RAISED

1. The husband asserted in the trial court that his Texas divorce decree was entitled to Full Faith and Credit (R. 90, ¶ 11).

2. No less than five of the husband's assignments of error specifically invoked the Full Faith and Credit Clause of the Constitution of the United States (R. 112, Nos. 12 and 13; R. 113, No. 15; R. 115-116, No. 19; R. 118-119, No. 20).

3. The opinion of the Supreme Court of Connecticut construes the Full Faith and Credit Clause at length and in detail (*infra*, pp. A4-A10).

## REASONS FOR GRANTING THE WRIT

The basic question presented by this case is whether, when one State after personal appearance of both parties enters a decree of absolute divorce that makes a complete property settlement between the parties, and while awarding the wife counsel fees specifically denies her any and all other relief, a sister State, although expressly recognizing the validity of the judgment of divorce, can so far deny it Full Faith and Credit as to grant the wife a separation decree based on the marriage relationship, plus, for the period of unsuccessful appeals from the judgment of divorce until its final affirmance, alimony on grounds contradicting those stated in that judgment, where under the law of the rendering State (a) affirmance made the judgment of divorce effective as of its rendition as if no appeal had ever been taken therefrom, and (b) that judgment while on appeal was a ground for abating or staying any other action between the same parties raising the same issues.

*First.* There is no question here of "divisible divorce," as in *Estin* v. *Estin*, 334 U.S. 541; *Kreiger* v. *Kreiger*, 334 U.S. 555; *Armstrong* v. *Armstrong*, 350 U.S. 568; or

*Vanderbilt* v. *Vanderbilt*, 354 U.S. 416; cf. *Simons* v. *Miami Beach Nat. Bank*, 381 U.S. 81, for here the wife appeared by counsel and in person and participated fully in the proceedings. Consequently, as this Court has consistently held, the Texas decree of divorce is entitled to Full Faith and Credit elsewhere not only in respect of the divorce but also as to the property rights therein adjudicated. *Sherrer* v. *Sherrer*, 334 U.S. 343; *Coe* v. *Coe*, 334 U.S. 378; *Cook* v. *Cook*, 342 U.S. 126; *Sutton* v. *Lieb*, 342 U.S. 402.

Nor is this case complicated by the effect of the Connecticut injunction purporting to restrain the husband from pursuing his divorce action in Texas. The Supreme Court of Connecticut very properly held (*infra*, pp. A5-A6) that this injunction did not relieve Connecticut of the duty to accord the Texas judgment Full Faith and Credit.[8]

*Second.* Accordingly, the question here is whether, conceding the validity of the Texas judgment of divorce in favor of the husband, as indeed the court below did (*infra*, pp. A4-A5), that judgment could still be held so far ineffective as to permit the courts of Connecticut to enter a separation decree with alimony in favor of the wife, on the basis of a subsisting marriage relationship and on grounds directly contrary to those in the Texas judgment, and to hold the separation-cum-alimony decree to be in effect until the final affirmance of the judgment of divorce, even though under the law of Texas such affirmance made it effective as of its original entry, and even though that judgment specifically denied the wife any and all relief not specifically granted her therein.

The test of the decree's validity being its effect "by law or usage in the courts of such State * * * from which

[8] It might well have added that, since a State acting through its legislature has no power to forbid one of its residents to establish domicile elsewhere in order to obtain a divorce (*Sherrer* v. *Sherrer*, 334 U.S. 343; *Coe* v. *Coe*, 334 U.S. 378), obviously a State acting through a single judge similarly lacks such power.

they are taken" (28 U.S.C. § 1738; *infra*, p. A25), the Connecticut court correctly looked to Texas law to ascertain such effect (*infra*, p. A6).

In Texas, as the Connecticut court necessarily found, a judgment that is pending appeal is not *res judicata;* the leading case is *Texas Trunk Ry. Co.* v. *Jackson Bros.*, 85 Tex. 605, 22 S.W. 1030; and see the other authorities *accord* cited at p. A6, *infra.*[4]

But there is another aspect of Texas law regarding finality of judgments, and that is its further rule that a judgment, once affirmed, stands as though never appealed. *Hart* v. *Mills*, 38 Tex. 513, 516-517 ("* * * in the State of Texas * * * the affirmance of a judgment in the Supreme Court recognizes the vitality of a judgment from the date of its rendition in the District Court"); *Texas Trunk Ry. Co.* v. *Jackson Bros.*, 85 Tex. 605, 607, 22 S.W. 1030, 1031 ("There can be no doubt that a person who has obtained a judgment, afterwards affirmed on appeal, is entitled to all the benefits that would have resulted from it had there been no appeal, for the affirmance gives effect to the original judgment"); *Hermann* v. *Allen*, 103 Tex. 382, 384, 128 S.W. 115, 116 ("It is of the same effect as if it had been rendered by the District Court at the end of the trial and no appeal had been taken"); *accord*, 4 Tex. Jur. 2d 440 (Appeal and Error—Civil, § 864).

Moreover, under Texas law a judgment being appealed, when properly interposed, requires the abatement of any other action pending between the same parties and involving the same issues as those resolved by the judgment.

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[4] In Texas only a final judgment can be appealed, but we make no point of that, in view of the different considerations governing finality for purposes of appeal and finality for purposes of *res judicata*. We should add, simply to show that the matter has not been overlooked, that the Texas decree was clearly final in the sense that it settled the rights of the parties and was not thereafter subject to modification. Cf. *Barber* v. *Barber*, 323 U.S. 77.

*Wheelis* v. *Wheelis*, 226 S.W. 2d 224, 227-228 (Tex. Civ. App.); *Wilson* v. *Avery Co. of Texas*, 192 S.W. 1130 (Tex. Civ. App.); *Cattleman's Trust Co.* v. *Blasingame*, 184 S.W. 574 (Tex. Civ. App.); *accord*, 1 Tex. Jur. 2d 51 (Abatement and Revival, § 29).

This Texas rule, also, was ignored in the decision of the Supreme Court of Connecticut.

*Third.* Consequently, by denying the Texas divorce judgment any validity or effect during the period of the wife's unsuccessful appeals therefrom, the Connecticut court plainly failed to give that judgment the effect it would have had in Texas, and, by thus making the husband pay alimony pending appeal in the face of the Texas court's refusal so to order, Connecticut to that extent denied the Texas judgment Full Faith and Credit.

It is no answer to say, as the Connecticut court did, that Texas recognizes the propriety in suitable instances of granting alimony pending appeal (*infra*, p. A9), because in this case the Texas court did not do so. To the contrary, although awarding the wife counsel fees and dividing the parties' property with great particularity (*supra*, pp. 5-6), it specifically declared (*infra*, p. A24) that "any and all relief not expressly granted herein to either of the parties is expressly denied."

This means, plainly enough, that the Texas court intended to and did bar her from any further allowance of any kind, including alimony pending appeal. Consequently Full Faith and Credit for the Texas judgment requires that she be foreclosed on that issue in Connecticut, to the same extent as she has properly and correctly been held foreclosed by the Texas judgment in respect of the issue of the Texas court's jurisdiction (*infra*, p. A5).[5]

[5] We do not dwell on the apparent inconsistency between the refusal of the Supreme Court of Connecticut to recognize the Texas decree in respect of its denial of alimony pending appeal (*infra*, p. A9), and its acceptance of that decree as to the disposition of the Darien house (*infra*, p. A13); the latter ruling may have rested on comity.

*Fourth.* The Connecticut court's denial of Full Faith and Credit to the Texas judgment is underscored by the existence of the settled Connecticut rule that a subsisting relationship of husband and wife and a statutory ground (e.g., cruelty or desertion) are the foundation of a separation decree, and that in the absence of such relationship and ground a separation decree cannot lawfully exist. *Smith* v. *Smith,* 150 Conn. 15, 23, 183 A. 2d 848, 852, and cases there cited; *Zybura* v. *Zybura,* 142 Conn. 553, 556, 115 A. 2d 452, 454; *Yates* v. *Yates,* 155 Conn. 544, 547, 235 A. 2d 656, 658. Thus the Connecticut court necessarily held that the relationship of husband and wife continued between the parties for twenty-one months after the entry of the Texas judgment of absolute divorce and that the husband deserted the wife and was the guilty party. Consequently these holdings, which are directly contrary to the jury findings recited in the Texas judgment, clearly deny Full Faith and Credit to that judgment.

*Fifth.* It follows that the decision below does violence to the oft-repeated admonitions of this Court that the command of the Full Faith and Credit Clause "requires the judgment of a sister State to be given full, not partial, credit in the State of the forum" (*Halvey* v. *Halvey,* 330 U.S. 610, 614); that "The faith and credit given is not to be niggardly but generous, full" (*Johnson* v. *Muelberger,* 340 U.S. 581, 584); and that "avoiding relitigation in other states of adjudicated issues" is the "intended function" of the Full Faith and Credit Clause (*Sutton* v. *Leib,* 342 U.S. 402, 407).

Several decisions in other States at least appear to have reached results at variance with the determination of the Connecticut court in the case at bar. *Ebner* v. *Steffanson,* 42 N. D. 229, 172 N.W. 857; *Armstrong* v. *Armstrong,* 99 Oh. App. 7, 130 N.E. 2d 710, appeal dismissed, 161 Oh. St. 390, 119 N.E. 2d 72; *Ferster* v. *Ferster,* 220 Ga. 319, 138 S.E. 2d 674. We do not rely solely on those cases, in part because they may be factually distinguishable, but primarily because the basic issue posed by the present

case is neither unique nor limited to divorce proceedings. To the contrary, that issue could arise anywhere and in any context.

There are three populous States whose law is in accord with that of Texas, namely, that while a judgment once rendered is not *res judicata* pending appeal, it takes effect upon affirmance as of the date of entry.

CALIFORNIA: Judgment not *res judicata* pending appeal: *Estate of Ricks,* 160 Cal. 467, 117 Pac. 539; *Pellissier* v. *Title Guarantee & Trust Co.,* 208 Cal. 172, 280 Pac. 947; see *Ebner* v. *Steffanson,* 42 N.D. 229, 172 N.W. 857 (applying California law).

Affirmance makes decree effective as of the date of its entry: *Howard* v. *Howard,* 87 Cal. App. 20, 261 Pac. 714.

GEORGIA: Judgment not *res judicata* pending appeal: *Garrick* v. *Tidwell,* 151 Ga. 294, 106 S.E. 551.

Affirmance makes decree effective as of the date of its entry: *Pearle Optical* v. *Georgia State Board,* 219 Ga. 856, 136 S.E. 2d 371; *Rahal* v. *Titus,* 110 Ga. App. 122, 138 S.E. 2d 68.

TENNESSEE: Judgment not *res judicata* pending appeal: *Turley* v. *Turley,* 85 Tenn. 251, 1 S.W. 891; *Railroad* v. *Brigman,* 95 Tenn. 624, 32 S.W. 762.

Affirmance makes decree effective as of the date of its entry: *Shepard* v. *Lanier,* 192 Tenn. 608, 241 S.W. 2d 587.

Thus the problem posed by the judgment now sought to be reviewed is certain to recur.[6]

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[6] In at least two other States, which seem not yet to have decided whether a judgment pending appeal is or is not *res judicata,* see cases collected at 9 A.L.R. 2d 994-995 and 1000-1002, the law is similarly that, on affirmance, the judgment becomes effective as of the date of original entry. *Dunton* v. *McCook,* 120 Iowa 444, 94 N.W. 942; *Shaw* v. *Addison,* 236 Iowa 720, 18 N.W. 2d 796; *Geier* v. *Tjaden,* 84 N.W. 2d 582 (N.D.).

## CONCLUSION

Here, all too plainly, Connecticut has denied a Texas judgment Full Faith and Credit. More significantly, however, the issue now presented—the requirements of the Full Faith and Credit Clause in respect of a judgment which, while not *res judicata* pending appeal, becomes effective on affirmance as if no appeal had ever been taken therefrom—is one of obvious and continuing public importance. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

FREDERICK BERNAYS WIENER,
1750 Pennsylvania Avenue, N.W.,
Washington, D. C. 20006,
*Counsel for the Petitioner.*

WILLIAM C. STRONG,
JOHN J. SULLIVAN,
Smith Building,
Greenwich, Conn. 06830,
*Of Counsel.*

MAY 1969.

# APPENDIX

## APPENDIX A

## OPINION BELOW

(Date of Supreme Court Judgment Jan. 28, 1969)

(Decision Announced Feb. 11, 1969)

SUPREME COURT

December Term, 1968

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MARGUERITE L. NOWELL

v.

AMES NOWELL

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Action for a legal separation, brought to the Superior Court in Fairfield County and referred to *Hon. Abraham S. Bordon,* state referee; judgment for the plaintiff on the referee's amended report, *Fitzgerald, J.,* and appeal by the defendant. *No error.*

*William C. Strong* and *John J. Sullivan,* for the appellant (defendant).

*Edgar W. Bassick III,* with whom was *Dion W. Moore,* for the appellee (plaintiff).

THIM, J. The plaintiff and the defendant were married in Maryland in April, 1957, and they resided in New York until January, 1960. Thereafter, the parties moved to Darien, Connecticut, where they occupied a house which was purchased in their joint names. They have no children of their marriage, and, in November, 1962, the husband deserted his wife.

The wife commenced an action for divorce in December, 1962, and the court ordered the husband to pay his wife

$1650 monthly as alimony pendente lite and to assume financial responsibility for various household expenses. The writ, summons and complaint were personally served upon the husband in Connecticut, and a firm of attorneys entered a general appearance on his behalf. Subsequently, the wife amended her complaint to request a legal separation, support and equitable relief. After the issues were joined, the case was referred to a referee to hear the evidence and to report to the court. The wife's action for legal separation and support was pending before the referee from February, 1964, to December, 1965.

While the wife's action was before the referee, the husband established his residence and domicil in Texas. In March, 1965, he filed a summons and complaint seeking a divorce in the Domestic Relations Court of Dallas County in Texas. On September 7, 1965, the wife was personally served in Connecticut with process in the divorce action which had been instituted by her husband in Texas. Shortly thereafter, the Domestic Relations Court in Texas issued an ex parte injunction temporarily restraining the wife from taking any action in her Connecticut case which might interfere with the husband's divorce action, which was then pending in Texas. On the same day that the wife was served with notice of the Texas antisuit injunction, the Connecticut Superior Court, pursuant to § 52-473 of the General Statutes, issued an ex parte injunction restraining the husband from prosecuting his Texas divorce action pending the disposition of the Connecticut action. A copy of the Connecticut injunction was served upon the husband's Connecticut counsel.

Despite the pendency of her action in Connecticut, the wife decided to appear and contest her husband's divorce action in Texas. On September 24, 1965, she filed a sworn motion in the Domestic Relations Court in Texas challenging the jurisdiction of that court on the grounds that neither party was a resident of Texas, that Texas had

no jurisdiction of the subject matter, that there was a prior action for a legal separation and support pending in Connecticut and that her husband had been enjoined by the Connecticut court from proceeding with the Texas action. The Texas court overruled the wife's motion challenging the court's jurisdiction, and the divorce case proceeded to trial before a court and a jury. The jury returned a verdict for the husband and judgment was rendered on December 22, 1965. The wife was adjudged guilty of "excesses, cruel treatment or outrages" which rendered the further living together of the parties insupportable. The Texas judgment dissolved the marriage and restored the parties to the status of single persons. A prenuptial agreement which had been executed by the parties was incorporated into the judgment, and unsettled issues relating to that agreement were resolved by the judgment itself. The judgment of divorce further ordered the husband to pay his wife's counsel fees in the sum of $6000 and recited that any relief not expressly granted to either of the parties was expressly denied.

The wife appealed from the judgment to the Texas Court of Civil Appeals (5th District), which affirmed the judgment of the lower court in October, 1966. *Nowell* v. *Nowell,* 408 S.W.2d 550 (Tex. Civ. App.). Thereafter, the wife filed with the Supreme Court of Texas an application for a writ of error to review the affirmance by the court of appeals. This application was denied in February, 1967. In May, 1967, the wife filed with the United States Supreme Court a petition for a writ of certiorari to reverse the decision of the Texas Court of Civil Appeals. The petition was denied on October 9, 1967. *Nowell* v. *Nowell,* 389 U.S. 847, 88 S. Ct. 53, 19 L. Ed. 2d 118.

Shortly after the entry of the Texas judgment of divorce, the husband, hereinafter referred to as the defendant, submitted to the Connecticut Superior Court on January 11, 1966, an exemplified copy of the Texas judg-

ment. At that time, the defendant moved that the Connecticut court recognize the Texas judgment and dismiss the wife's action for separation and support on the ground that the judgment was res judicata of the issues and a bar to her action. The defendant has repeatedly made this claim at subsequent stages in the proceedings.

The trial court refused to recognize the Texas judgment of divorce and permitted the wife, hereinafter referred to as the plaintiff, to proceed with the prosecution of her action. On April 22, 1966, the court accepted the referee's report and rendered judgment in favor of the plaintiff, granting her a legal separation, permanent support of $1650 monthly and counsel fees of $24,000. The court also ordered the house in Darien to be sold and the proceeds divided equally between the parties or that the defendant pay the plaintiff her equity in an undivided one-half interest in the property. Moreover, the defendant was ordered to pay the taxes, mortgage interest, insurance and major repairs until the house was sold.

The defendant has taken the present appeal from this judgment, and the trial court ordered him to pay the plaintiff temporary support of $1650 monthly pending the appeal and $6000 for her counsel fees to defend the appeal.

## I

The defendant claims that the trial court committed error by rendering a judgment for legal separation and support on the ground that it was rendered in violation of the full faith and credit clause of the United States constitution. We do not agree with this claim for reasons hereinafter stated.

The full faith and credit clause of the United States constitution and the statute which implements it (28 U.S.C. § 1738) require that the judgments of the courts of each state shall be given the same faith, credit and effect in sister states as they have by law, custom or usage in the

courts of the state rendering them. *Aldrich* v. *Aldrich,* 378 U.S. 540, 543, 84 S. Ct. 1687, 12 L. Ed. 2d 1020; *Johnson* v. *Muelberger,* 340 U.S. 581, 587, 71 S. Ct. 474, 95 L. Ed. 552; *Coe* v. *Coe,* 334 U.S. 378, 384, 68 S. Ct. 1094, 92 L. Ed. 1451; *New York ex rel. Halvey* v. *Halvey,* 330 U.S. 610, 614, 67 S. Ct. 903, 91 L. Ed. 1133; *Milwaukee County* v. *M. E. White Co.,* 296 U.S. 268, 273, 56 S. Ct. 229, 80 L. Ed. 220; *Koster* v. *Koster,* 137 Conn. 707, 710, 81 A.2d 355; *Freund* v. *Burns,* 131 Conn. 380, 383, 40 A.2d 754.

The plaintiff, accompanied by her attorney, appeared in the Texas court, objected to the court's jurisdiction and contested the defendant's action for a divorce on the merits. Under Texas law, once such a judgment has become final it would conclude all questions relating to the divorce and to the court's jurisdiction, and the plaintiff could not collaterally attack the judgment. *Davis* v. *First National Bank of Waco,* 139 Tex. 36, 41, 161 S.W.2d 467; *Pavlas* v. *Pavlas,* 428 S.W.2d 880, 881 (Tex. Civ. App.); *Goldberg* v. *Goldberg,* 425 S.W.2d 830, 831 (Tex. Civ. App.); 34 Tex. Jur. 2d, Judgments, § 450.

The existence of the Connecticut antisuit injunction forbidding the defendant from prosecuting his Texas divorce did not relieve the Connecticut court of the duty to accord full faith and credit to the Texas judgment in January, 1966. This injunction was directed to the person of the defendant, and it had no effect on the jurisdiction of the Texas court. *Cunningham* v. *Cunningham,* 25 Conn. Sup. 221, 224, 200 A.2d 734; 24 Am. Jur. 2d, Divorce and Separation, § 1010; 43 C.J.S., Injunctions, § 51. Connecticut must recognize the Texas judgment under the mandate of full faith and credit despite the fact that it was obtained in defiance of a Connecticut antisuit injunction. *Rapoport* v. *Rapoport,* 273 F. Sup. 482 (D. Nev.); *Zieper* v. *Zieper,* 14 N.J. 551, 103 A.2d 366; *Commonwealth ex rel. Messing* v. *Messing,* 195 Pa. Super. 334, 335, 171 A.2d 893; *Dominick* v. *Dominick,* 26 Misc. 2d 344, 347, 205

N.Y.S.2d 503; *Kleinschmidt* v. *Kleinschmidt*, 343 Ill. App. 539, 99 N.E.2d 623.

Since we have decided that the Connecticut court should have recognized the Texas judgment of divorce, the question arises what was the effect which should have been given to that judgment. The Texas judgment of divorce was appealed by the plaintiff to the Texas Court of Civil Appeals, the Texas Supreme Court and the United States Supreme Court. Connecticut must look to the Texas law to determine when a Texas judgment which has been appealed is considered final and entitled to res judicata effect and when it can be pleaded as a bar to another action involving the same parties and subject matter. *Bank of North America* v. *Wheeler*, 28 Conn. 433, 440, 441.

Our examination of the Texas law reveals that a Texas judgment cannot be pleaded defensively as a bar to another action involving the same parties and subject matter so long as there is an appeal pending. A Texas judgment which is pending appeal lacks the finality of character which is necessary to constitute a bar to another suit and have res judicata effect. Such a judgment cannot be introduced into evidence in support of a right or of a defense declared by it. A Texas judgment which is pending appeal is not conclusive of the rights of the parties. *Texas Trunk Ry. Co.* v. *Jackson Bros.*, 85 Tex. 605, 608, 22 S.W. 1030; *Houston Oil Co.* v. *McCarthy*, 245 S.W. 651, 653 (Tex.) (Tex. Comm. App.); *Fidelity Union Casualty Co.* v. *Hanson*, 44 S.W.2d 985, 987 (Tex. Comm. App.); *Sabine Pilots Assn.* v. *Lykes Bros. Steamship, Inc.*, 346 S.W.2d 166, 169 (Tex. Civ. App.); *State Life Ins. Co.* v. *Wilson*, 57 S.W.2d 355, 357 (Tex. Civ. App.); *United North & South Oil Co.* v. *Meredith*, 258 S.W. 550, 554 (Tex. Civ. App.); note, 9 A.L.R.2d 984, 995 (discussing Texas cases); 34 Tex. Jur. 2d, Judgments, § 472.

A Texas judgment which is pending appeal should not be given effect in another state because such a judgment

is not final under Texas law. *Chapman* v. *John St. John Drilling Co.*, 73 N.M. 261, 266, 387 P.2d 462; *Van Natta* v. *Van Natta*, 200 S.W. 907, 908 (Tex. Civ. App.); see *Ray* v. *Hasley*, 214 F.2d 366, 368 (5th Cir.). Once the judgment of a Texas court has been upheld and the pendency of the case has ceased, the judgment then becomes final, and it can thereafter be pleaded as a bar to terminate another action. *Cook v. Burnley*, 45 Tex. 97, 113, 114; 34 Tex. Jur. 2d, Judgments, § 472.

Applying these principles to the facts of the instant case, we conclude that since the judgment of divorce was pending appeal until the United States Supreme Court denied certiorari on October 9, 1967, under Texas law it could not be pleaded in bar to terminate an action for separation and support. Therefore, the Connecticut court properly allowed the plaintiff to proceed with the prosecution of her separation and support action and properly rendered judgment for her in April, 1966, because this was prior to the time that the Texas judgment of divorce was affirmed on appeal.

The trial court was presented with two alternatives when the defendant's counsel produced an exemplified copy of the Texas judgment from which an appeal had been taken. One alternative was to continue the plaintiff's action with orders for temporary support and counsel fees until the Texas judgment became final. *Houghton* v. *Superior Court*, 187 Cal. 661, 666, 203 P. 765; *Brown* v. *Campbell*, 100 Cal. 635, 647, 35 P. 433; *Robinson* v. *El Centro Grain Co.*, 133 Cal. App. 567, 573, 24 P.2d 554. By following this approach the court would have avoided the possibility of inconsistent judgments being rendered in different states. Note, "Developments in the Law—Res Judicata," 65 Harv. L. Rev. 818, 836.

The second alternative was to permit the plaintiff's action to proceed to judgment. When the Texas judgment eventually became final and if it was upheld on appeal,

the defendant could thereafter make a motion to vacate the Connecticut judgment for separation and support. The trial court followed this second approach, and we do not consider it to be error.

Under Connecticut law, a foreign judgment of divorce has the effect of terminating a husband's duty to comply with Connecticut support orders provided that both parties participated in the proceedings and the judgment has become final in the state of rendition. *Yates* v. *Yates,* 155 Conn. 544, 547, 235 A.2d 656; *Smith* v. *Smith,* 151 Conn. 292, 298, 197 A.2d 65; *Smith* v. *Smith,* 150 Conn. 15, 23, 183 A.2d 848; *Schaeffer* v. *Schaeffer,* 128 Conn. 628, 635, 25 A.2d 243; see *Lynn* v. *Lynn,* 302 N.Y. 193, 203, 97 N.E.2d 748. This termination of the husband's duty to comply with the Connecticut support order would accord with Texas law because in Texas a husband cannot be ordered to support his former wife after a divorce has become final even though the husband may have been the offending party.* Tex. Rev. Civ. Stat. Ann., arts. 4637, 4638; *Francis* v. *Francis,* 412 S.W.2d 29, 32 (Tex.); *Cunningham* v. *Cunningham,* 120 Tex. 491, 40 S.W.2d 46; *Martin* v. *Martin,* 17 S.W.2d 789, 791 (Tex. Comm. App.); *Bond* v. *Bond,* 41 Tex. Civ. App. 129, 130, 90 S.W. 1128; *Boyd* v. *Boyd,* 22 Tex. Civ. App. 200, 202, 54 S.W. 380; *Pape* v. *Pape,* 13 Tex. Civ. App. 99, 35 S.W. 479; 20 Tex. Jur. 2d, Divorce and Separation, § 289. Furthermore, under Texas law a husband is not obligated to transfer any property to his divorced wife which had not been made a part of the equitable division of their property as set forth in the final judgment. *Graham* v. *Graham,* 331 S.W.2d 499, 502 (Tex. Civ. App.). Hence, under both Connecticut law and Texas law, the Connecticut judgment of separation and support became unenforceable once the Texas judgment of divorce had become final.*

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* As amended March 5, 1969.

The defendant cites the cases of *Hart* v. *Mills*, 38 Tex. 513, 516, and *Texas Trunk Ry. Co.* v. *Jackson*, 85 Tex. 605, 607, 22 S.W. 1030, as requiring the termination of the Connecticut action in January, 1966, right after the entry of the Texas judgment. These two cases stand for the proposition that a judgment which has been affirmed on appeal is entitled to all the benefits which would have resulted from it just as if there had been no appeal. We do not, however, interpret these cases as requiring the termination of monthly support payments ordered by the Connecticut court as of the date that the Texas judgment was rendered in December, 1965. Article 4637 of the Revised Civil Statutes of Texas permits a trial court to order temporary support for a wife until a divorce case becomes final. This statute has been interpreted to permit temporary support pending the appeal of a judgment of divorce. *Ex parte Scott*, 133 Tex. 1, 8, 123 S.W.2d 306; *Ex parte Lohmuller*, 103 Tex. 474, 476, 129 S.W. 834, 835; *Williams* v. *Williams*, 125 S.W. 937, 940 (Tex. Civ. App.). Moreover, the Supreme Court of Texas has held that an appeal from a divorce operates to suspend the entire judgment of the district court until an appellate court delivers a final judgment thereon. *Ex Parte Hodges*, 130 Tex. 280, 283, 109 S.W.2d 964. We believe that these authorities dispel any validity to the defendant's claim that the Connecticut support orders should have terminated as of the date that the judgment of divorce was rendered in December, 1965.

The application of these principles to the instant case leads to the following result. The lower court did not commit error by rendering a judgment for a legal separation and support because at that time (April, 1966) the Texas judgment of divorce was pending appeal and was not final under Texas law. The Texas judgment became final on October 9, 1967, when the United States Supreme Court denied certiorari, and at that time the Texas judg-

ment had the effect of terminating the defendant's duty to comply with the Connecticut judgment of support. All Connecticut support orders survived the Texas decree until October 9, 1967, at which time the Texas judgment became final under Texas law. *Smith* v. *Smith*, 151 Conn. 292, 298, 197 A.2d 65. The result we have reached is just and equitable because the plaintiff was not receiving temporary support pendente lite or pending the appeal from the Texas judgment by order of the Texas court.

II

The defendant claims that the trial court committed reversible error by overruling his plea in abatement which was predicated on a claimed failure to return the writ to the court at least six days before the return day in violation of § 52-47 of the General Statutes. There is, however, no merit to this claim because by requesting affirmative relief in the form of a counterclaim for divorce the defendant submitted himself to the court's jurisdiction and waived his right to assert any defect previously raised by a plea in abatement. *Receivers Middlesex Banking Co.* v. *Realty Investment Co.*, 104 Conn. 206, 214, 132 A. 390; Stephenson, Conn. Civil Proc. § 80, p. 164.

III

Before final judgment was rendered, the defendant was adjudged in contempt of court for violating two preliminary injunctions, one restraining him from proceeding with his divorce in Texas and the other forbidding him from transferring or encumbering his trust assets. In both instances, the penalty was held in abeyance, and the record does not disclose that the defendant has been punished in any way.

The defendant's conduct amounted to civil contempt. His contemptuous conduct violated the plaintiff's civil rights, which were conferred by the preliminary injunc-

tions issued for her benefit. In the case of civil contempt, punishment should be civil in nature and imposed at the request of the offended party. *State* v. *Jackson*, 147 Conn. 167, 169, 158 A.2d 166; *Welch* v. *Barber*, 52 Conn. 147, 156.

These injunctions were interlocutory in character, and they became inoperative and terminated with the rendition of the final judgment. *Saunders* v. *Saunders*, 140 Conn. 140, 146, 98 A.2d 815. In a divorce or separation action, a husband cannot be punished for his civil contempt arising from non-compliance with preliminary injunctions after a final judgment has been rendered unless the final judgment itself awards damages for the civil contempt. See *Richardson* v. *Richardson*, 218 Minn. 42, 45, 15 N.W.2d 127.

The defendant cannot be punished for violating these preliminary injunctions because final judgment has been rendered with no provision in that judgment for damages arising from the civil contempt. It is therefore unnecessary to discuss the claims of error directed to the injunctions and the adjudications of contempt because the issues have become academic. *Congress & Daggett, Inc.* v. *Seamless Rubber Co.*, 145 Conn. 318, 323, 142 A.2d 137; *Eastern Electric Construction Co.* v. *Morrissey*, 142 Conn. 742, 743, 115 A.2d 427.

IV

The court did not commit error by denying the defendant's motion for permission to file a counterclaim for a divorce. The court denied the motion on the ground that granting the motion would unduly delay the hearing before the referee. The record does not support the defendant's claim that the trial court abused its discretion by denying the defendant permission to file a counterclaim for a divorce. *Cook* v. *Lawlor*, 139 Conn. 68, 70-73, 90 A.2d 164.

V

The defendant claims that the court committed error in failing to return the report to the referee for correction,

in accepting the report and the amended report and in granting judgment thereon. We disagree with these claims. From our review of the reports, we are satisfied that the subordinate facts found by the referee support both his conclusion that the plaintiff was entitled to a legal separation and his recommendations for monthly support and counsel fees.

## VI

Finally, the defendant claims that the court committed error by denying his motion to open and vacate the judgment. The basis of this claim is that the trial judge who rendered judgment on the report was not the same trial judge who heard and ruled on the defendant's exceptions and objections to the report. The defendant did not raise any objection at the time that judgment was rendered. Moreover, the defendant was not harmed in any way because the trial judge who rendered judgment on the report did not disturb any rulings which had been made concerning the defendant's exceptions and objections to the report.

We shall not discuss any of the other claims of error assigned by the defendant because they have not been pursued in his brief and are thus treated as abandoned. *Sherman-Colonial Realty Corporation* v. *Goldsmith,* 155 Conn. 175, 183, 230 A.2d 568; *State* v. *Benson,* 153 Conn. 209, 212, 214 A.2d 903; *Adamsen* v. *Adamsen,* 151 Conn. 172, 173, 195 A.2d 418.

## VII

In summation, we conclude that the judgment of the trial court is free from harmful error. Because, however, of the affirmance of the Texas judgment which occurred after the rendition of the Connecticut judgment, the Connecticut judgment must be vacated.

The defendant must pay any arrearages which are due under the court order granting alimony pendente lite.

The defendant must comply with all the requirements of the judgment until October 9, 1967. He must pay support of $1650 monthly until October 9, 1967, and he must also pay the plaintiff's counsel fees of $24,000. Moreover, the defendant must pay the plaintiff's counsel fees of $6000 to defend this appeal since they had been ordered before the Texas judgment became final. In the event that the house in Darien has not yet been sold, we direct that its disposition should be governed by the terms of the Texas judgment.

The judgment for a legal separation and support should be vacated as of October 9, 1967, and the total amount of support and counsel fees which is owed by the defendant should be set forth in the judgment vacating the judgment of April, 1966.

There is no error, but the case must be and is remanded for further proceedings in accordance with the judgment and this opinion.

In this opinion the other judges concurred.

## APPENDIX B

## JUDGMENTS BELOW

### 1. Judgment of Affirmance

STATE OF CONNECTICUT

At a Supreme Court, holden at Hartford on the first Tuesday of December, 1968

MARGUERITE LOVELETT NOWELL

vs.

AMES NOWELL

*On Appeal From the Superior Court at Bridgeport*
No. 6058

This appeal by the defendant, claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Superior Court for Fairfield County, at Bridgeport, on the 6th day of June, 1966, and came to this Court at its session at Hartford, on the first Tuesday of October, 1966; and thence by continuance to the present term when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court, there is no error but the case must be and is remanded for further proceedings in accordance with the opinion of this Court.

It is therefore considered and adjudged that there is no error but the case must be and is remanded for further proceedings in accordance with the opinion of this Court and the amendment thereto.

By the Court,
J. LEO CAMPANA
J. Leo Campana, Clerk

Date of Judgment: January 28, 1969
Decision announced: February 11, 1969

**2. Orders Denying Reargument**

## DECISION DENYING APPELLANT'S MOTION FOR REARGUMENT

March 5, 1969 The motion by the defendant to reargue is denied. By the Court, KING, C. J.

## DECISION DENYING APPELLEE'S MOTION FOR REARGUMENT

March 5, 1969 The motion by the plaintiff to reargue is denied. By the Court, KING, C. J.

## APPENDIX C

## TEXAS JUDGMENT INVOLVED

No. 65-1768-DR/2

IN THE
DOMESTIC RELATIONS COURT NO. TWO
DALLAS COUNTY, TEXAS

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AMES NOWELL

—v.—

MARGUERITE LOVELETT NOWELL.

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### JUDGMENT

ON THE 15th day of December, 1965, came on to be heard the above entitled and numbered cause wherein Ames Nowell, as Plaintiff, is seeking a divorce from Marguerite Lovelett Nowell, as Defendant, together with a recovery by Plaintiff of certain properties in Defendant's possession and a division of the property accumulated during the course of said marriage; and came the parties in person and by and through their respective attorneys, whereupon the Defendant, Marguerite Lovelett Nowell presented to the Court her First Motion For Continuance, the Court having considered same, and having heard argument of counsel relative to same, is of the opinion that the First Motion For Continuance filed by Marguerite Lovelett Nowell should be overruled and, it was accordingly:

ORDERED, ADJUDGED and DECREED that Defendant's First Motion For Continuance be and the same was in all things overruled.

The Defendant, Marguerite Lovelett Nowell, then presented to the Court Defendant's First Amended Plea In Abatement and the Court having considered same, finds

that the Court has heretofore overruled Defendant's motions attacking the jurisdiction of this Court over the Plaintiff and the Defendant and over the subject matter of the litigation, and is of the opinion, as the Court has heretofore found on the 4th day of November, 1965, after a full and complete hearing on October 22, 1965, that Defendant's Plea To The Jurisdiction should be overruled, the Court further finds after due consideration that Defendant's First Amended Plea In Abatement should be and the same is, in all things, overruled and it is therefore:

ORDERED, ADJUDGED and DECREED that Defendant's First Amended Plea In Abatement be and the same is in all things overruled.

Thereupon, both parties then announced ready for trial, whereupon a jury having been demanded by the Defendant, Marguerite Lovelett Nowell, and said jury having been called and thereafter impaneled and sworn into office and the First Amended Original Petition of the Plaintiff, filed herein on December 6, 1965, and the Second Amended Original Answer of the Defendant, filed herein on December 14, 1965, both being read to the jury and Court by the parties' respective attorneys and the Court having heard the pleadings and evidence finds that the Court has jurisdiction of the parties and of the subject matter; that Plaintiff's suit has been filed for a period of more than sixty (60) days; and that Plaintiff's First Amended Petition is in due form and contains all of the allegations required by law, and the parties having presented testimony and evidence and after having rested and closed, the case was submitted by the Court to the jury on the 18th day of December, 1965, upon the charge of the Court containing special issues. Said jury of twelve (12) men and women after due deliberation thereafter, submitted the following answers in reply to the special issues as herein set out and the Court after receiving the charge and the answers to the special issues then and there polled each and every juror who stated that

the answers to the special issues were true and correct. Said special issues, and the answers thereto, being as follows:

"SPECIAL ISSUE NO. 1.

"DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF, AMES NOWELL, HAS BEEN AN ACTUAL BONAFIDE INHABITANT OF THE STATE OF TEXAS FOR A PERIOD OF TWELVE MONTHS IMMEDIATELY PRECEDING DECEMBER 6, 1965?

"ANSWER: 'YES' or 'NO.' ANSWER: "YES"

"SPECIAL ISSUE NO. 2.

"DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT MARGUERITE LOVELETT NOWELL HAS BEEN GUILTY OF EXCESSES, CRUEL TREATMENT, OR OUTRAGES, AS THAT TERM IS DEFINED IN THIS CHARGE, TOWARDS AMES NOWELL?

"ANSWER: 'YES' OR 'NO.' ANSWER: "YES"

"SPECIAL ISSUE NO. 3

"DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT SUCH EXCESSES, CRUEL TREATMENT OR OUTRAGES, IF ANY YOU HAVE FOUND IN ANSWER TO SPECIAL ISSUE NO. 2, WERE OF SUCH A NATURE AS TO RENDER THE FURTHER LIVING TOGETHER AS HUSBAND AND WIFE OF AMES NOWELL AND MARGUERITE LOVELETT NOWELL INSUPPORTABLE, AS THAT TERM IS HEREIN DEFINED?

"ANSWER: 'YES' OR 'NO.' ANSWER: "YES"

"SPECIAL ISSUE NO. 4

"DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT AMES NOWELL COMMITTED ACTS OF EXCESSES, CRUEL TREATMENT OR OUTRAGES OF THE SAME GENERAL KIND AND CHARACTER TOWARD MARGUERITE LOVELETT NOWELL WHICH PROVOKED THE ACTS, IF ANY, FOUND IN SPECIAL ISSUE NUMBER 2?

"ANSWER: 'YES' or 'NO.' ANSWER: "NO"

"SPECIAL ISSUE NO. 5

"DO YOU FIND FROM A PREPONDERANCE OF THE EVIDENCE THAT, FOR A PERIOD OF THREE YEARS PRIOR TO DECEMBER 6, 1965, THE DEFENDANT, MARGUERITE LOVELETT NOWELL ABANDONED THE PLAINTIFF, AMES NOWELL, AS THE TERM ABANDONMENT IS DEFINED HEREIN?

"ANSWER: 'YES' OR 'NO.' ANSWER "YES".

It is therefore, in accordance with the said jury's findings as set out hereinabove and the findings of the Court, ORDERED, ADJUDGED and DECREED by the Court that Ames Nowell, Plaintiff, be and he is hereby granted a divorce from Marguerite Lovelett Nowell, Defendant, and that the bonds of matrimony heretofore existing between them be, and the same are, hereby dissolved and the parties are respectively restored to the status of single persons.

Further, came the parties, in person, and by stipulation through their respective attorneys of record, and consented that the Court, based upon the pleadings and the evidence, determine the issues raised by the pleadings regarding the Pre-Nuptial Agreement executed by the parties on or about April 3, 1957, and the respective rights of the parties in and to certain items of property acquired during the course of this marriage, which issues by agreement of the parties

and their respective counsel, were not submitted to the jury. The Court having considered the pleadings and the evidence and based on the consent of the parties and the agreement of counsel, is of the opinion and hereby ORDERS, ADJUDGES and DETERMINES that the Pre-Nuptial Agreement of April 3, 1957, executed by and between Ames Nowell, Plaintiff, and Marguerite Lovelett Nowell, Defendant, is a legal, valid and binding agreement between the parties and has not been revoked or otherwise set aside and that at the time of its execution, same was executed, attested by two witnesses and properly acknowledged in accordance with the law; that the house and lot located at 35 Tokeneke Drive, West, Darien, Connecticut was acquired during the marriage of Plaintiff, Ames Nowell, and Defendant, Marguerite Lovelett Nowell, and that same should be sold and after the payment of the mortgage indebtedness thereon, the proceeds then divided equally between the parties; that the 1964 Rambler automobile presently in the possession of Plaintiff should be set aside to the Plaintiff as his separate property; that the 1962 Ford Thunderbird automobile presently in the possession of the Defendant should be set aside to the Defendant as her separate property; that Plaintiff is entitled to the possession of the jewelry which is presently in the possession of the Defendant, Marguerite Lovelett Nowell, which belonged to Plaintiff's mother, Anna Lee Ames Nowell, and the Court ORDERS, ADJUDGES and DETERMINES that the Plaintiff, Ames Nowell, is entitled to the possession of same and the use of said jewelry for Plaintiff's life and that same should be delivered by Defendant to Plaintiff forthwith; and the Court further finds and determines that the Defendant has no interest therein. The Court further finds and accordingly ORDERS, ADJUDGES and DETERMINES that certain items of antique furniture, china, linens, silverware, paintings and other items of personalty located in the house at 35 Tokeneke Drive, West, Darien, Connecticut, is subject to a life estate in Ames Nowell and that said antique furniture, china, linens, silverware, paintings and other items of personalty given and transferred by

Plaintiff prior to this marriage to Peregrine White Sanctuary, Inc. belongs to and is the property of the Peregrine White Sanctuary, Inc. and that Plaintiff is entitled to the use of same for life and same should be delivered into the possession of Plaintiff forthwith; the Court further finds that the Defendant makes no claim to same and has no interest therein, and that the other items of furniture in said Darien, Connecticut home belong to and are the separate property of the Defendant. The Court further finds that the Defendant has accumulated a separate estate prior to said marriage which belongs to the Defendant in and near Briarcliff Manor, New York, consisting of approximately eighteen (18) acres, together with improvements thereon, a house located in Southport, Connecticut, certain stocks and securities, all of which is the separate property of the Defendant. The Court further finds that the parties have acquired a 54-foot Constellation Chris-Craft boat presently in the possession of the Plaintiff and that said boat has a reasonable value of $35,000.00 and upon which there exists thereon a mortgage of approximately $80,000.00. In this connection, the Court sets aside said boat to the Plaintiff as his said separate property, and finds that the Defendant shall be released, free and clear of any responsibility or obligation in connection with any mortgage indebtedness thereon. It is therefore, accordingly:

ORDERED, ADJUDGED and DECREED that the Plaintiff, Ames Nowell, is entitled to the use and possession for his life of all the jewelry which belonged to Plaintiff's mother, Anna Lee Ames Nowell, and presently in Defendant's possession, and that the Defendant, Marguerite Lovelett Nowell, forthwith deliver same to Plaintiff, Ames Nowell, same being hereby set aside to Plaintiff.

It is further ORDERED, ADJUDGED and DECREED that the Plaintiff, Ames Nowell, is entitled to the use and possession for his life of all the antique furniture, china, linens, silverware, paintings and other items of personalty given and transferred prior to marriage to the Peregrine White

Sanctuary, Inc. and presently in Defendant's possession and that the Defendant, Marguerite Lovelett Nowell, forthwith deliver same to Plaintiff, Ames Nowell, same being hereby set aside to Plaintiff.

It is further ORDERED, ADJUDGED and DECREED that the parties hereto shall forthwith sell the house and lot located at 35 Tokeneke Drive, West, Darien, Connecticut, and that the parties hereto shall thereupon pay the then outstanding mortgage indebtedness and thereafter the net proceeds from said sale be divided equally between Plaintiff, Ames Nowell, and the Defendant, Marguerite Lovelett Nowell.

It is further ORDERED, ADJUDGED and DECREED that the 1964 Rambler automobile in Plaintiff's possession be set aside to Plaintiff as his separate property. It is further ORDERED, ADJUDGED and DECREED that the 1962 Ford Thunderbird automobile in Defendant's possession be set aside to Defendant as her separate property.

It is further ORDERED, ADJUDGED and DECREED that Defendant's estate in and near Briarcliff Manor, New York, consisting of approximately eighteen (18) acres, together with improvements thereon, a house and lot located in Southport, Connecticut, and stocks and other securities in Defendant's name is the separate property of Defendant.

It is further ORDERED, ADJUDGED and DECREED that the 54-foot Constellation Chris-Craft boat presently in Plaintiff's possession, be and same is, set aside to Plaintiff, Ames Nowell, as his separate property and that Defendant, Marguerite Lovelett Nowell, is and shall be, released from any responsibility or obligation to pay any portion of the mortgage indebtedness upon same and that Plaintiff, Ames Nowell, shall hold said Defendant free and harmless by reason of same mortgage indebtedness.

The Court further finds and it is the order of this Court that the interest in the above-mentioned properties set aside to the Plaintiff, Ames Nowell, is hereby divested out of the Defendant, Marguerite Lovelett Nowell, if any interest therein she has, and vested in Plaintiff, Ames Nowell,

as his separate property and estate free and clear of any interest, claim, right or demand by Defendant, and that the property set aside to the Defendant, Marguerite Lovelett Nowell, is hereby divested out of the Plaintiff, Ames Nowell, if any interest therein he has, and vested in the Defendant, Marguerite Lovelett Nowell, as her separate property and estate, free and clear, of any interest, claim, right or demand by Plaintiff.

The Court further finds and determines and accordingly: ORDERS, ADJUDGES and DECREES that any and all clothing and personal effects in the possession of either Plaintiff, Ames Nowell, or Defendant, Marguerite Lovelett Nowell, shall be held and owned by said party as the separate property of said party and that there is no other property, either real or personal, belonging to Plaintiff, Ames Nowell, or the Defendant, Marguerite Lovelett Nowell, requiring adjudication by the Court as between the parties hereto.

Further, the Court ORDERS, ADJUDGES and DECREES that the Plaintiff, Ames Nowell, shall hold Defendant, Marguerite Lovelett Nowell, free, clear and harmless from any indebtedness contracted by Plaintiff and owed to The National Shawmut Bank of Boston, Massachusetts, any and all debts contracted by Plaintiff and owed to United Boat Company, New York City, any claim presently existing for attorney's fees, contracted by Plaintiff in the approximate sum of $25,000.00 and filed as a lien on the house and lot at 35 Tokeneke Drive, West, Darien, Connecticut, all of which shall be solely the indebtedness of Plaintiff, and further, that Defendant, Marguerite Lovelett Nowell, shall hold Plaintiff, Ames Nowell, free, clear and harmless of the mortgage indebtedness owed on the house and lot owned by Defendant located at Southport, Connecticut, and any other debts contracted by her for her separate property and same shall be solely the indebtedness of Defendant.

The Court further finds that there have been no children born of this marriage and that no children were adopted.

The Court further finds that the Defendant is entitled to recover of and receive from the Plaintiff reasonable at-

torney's fees in the sum of $6,000.00 payable to the Defendant's attorneys of record, Burford, Ryburn & Ford, attorneys for Defendant, Marguerite Lovelett Nowell, which fee shall be paid in installments of $1,000.00 each, the first payment to be February 1, 1966, and a like payment on the first day of each succeeding month thereafter until paid, which sum the Court finds to be a fair and reasonable sum and which shall be in full satisfaction of any obligation of Plaintiff to Defendant's said attorneys in this action, for which let execution issue.

It is further ORDERED, ADJUDGED and DECREED by the Court that any and all relief not expressly granted herein to either of the parties is expressly denied.

Further, all costs incurred in this cause are taxed against the Plaintiff, Ames Nowell.

SIGNED and ENTERED this 22nd day of December, 1965.

ROBERT H. HUGHES
*Judge*
DOMESTIC RELATIONS COURT NUMBER TWO,
DALLAS COUNTY, TEXAS

Approved as to Form:

LAW OFFICES OF WILLIAM A. MCKENZIE

By WILLIAM A. MCKENZIE
William A. McKenzie
631 Fidelity Union Life Building
Dallas, Texas 75201
RIverside 2-1861
*Attorneys for Plaintiff, Ames Nowell*

BURFORD, RYBURN & FORD

By ROBT. A. WOOLDRIDGE
15th Floor, Fidelity Union Life Building
Dallas, Texas 75201
RIverside 1-5811
*Attorneys for Defendant, Marguerite Lovelett Nowell*

## APPENDIX D

## CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. Section 1 of Article IV of the Constitution of the United States provides:

> "SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

2. Section 1738 of Title 28 of the United States Code provides in pertinent part as follows:

> **"§1738. State and Territorial statutes and judicial proceedings; full faith and credit**
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> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."